IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7434 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAYA ALIAS HANSABEN WIFE OF KISHOR KARSHAN KHARVA

Versus

STATE OF GUJARAT

Appearance:

MR SHAKEEL A QURESHI for Petitioner No. 1

Mr.M.K.Patel, Assistant GOVERNMENT PLEADER,

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 27.6.2002. Along with the detention order, the petitioner is also served with the grounds of detention. In the said grounds,

there is a mention about eight criminal cases, which are lodged against the petitioner during the period between March 2000 and March, 2002. All these cases are in connection with the Bombay Prohibition Act and it is found that she has tried to transport illegally certain quantity of Indian Made Foreign Liquor. She is accordingly detained as a `bootlegger' under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA", for short).

At the time of hearing of this petition, learned Advocate for the petitioner, submitted that the last incident in question is of March, 2002 and as against that, the detention order is dated 27th June, 2002. He submitted that there is a delay of practically about three months in passing the detention order. He submitted that, if, really, the activities of the petitioner were required to be curbed, it was not necessary to wait for three months before passing the detention order.

Learned Advocate for the petitioner placed reliance on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate,

vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. Is. Ramamurthy reported in 1993(2) Suppli SCC 61.

... ..."

The delay is not explained as affidavit-in-reply is not filed by the authority. In that view of the matter, the petition is required to be allowed on the aforesaid ground of delay in passing the detention order.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. Rule is made absolute.

19th February, 2003 (P.B. Majmudar, J.)

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(apj)